

**I. Qwest's 271 Application Fails to Show Compliance with Checklist Item (i)
"Interconnection in accordance with the requirements of sections 251(c)(2) and
252(d)(1)"**

- FCC interconnection rules and obligations require that the facilities' cost should be shared based on the amount of traffic originated by each party's customers.
 - FCC Rule 51.703(b), promulgated by the FCC in the *Local Competition Order* and modified in the *ISP Remand Order*, 47 C.F.R. 51.703(b) states that: "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."
 - FCC Rule 51.703(b) is a general rule applicable to all telecommunications carriers and all telecommunications traffic.
 - The plain language of the rule prohibits an originating carrier such as Qwest from charging interconnecting carriers such as Level 3 for the costs Qwest incurs to bring its customers' calls to the POI with Level 3.
- In *TSR Wireless, LLC v. US West*, the FCC made clear that this rule applies to both one-way traffic and two-way traffic, so long as the traffic falls within Rule 51.701(b)(1)'s definition of "telecommunications traffic."
 - The FCC also confirmed that the cost of facilities used to deliver traffic to the POI "is the originating carrier's responsibility, because these facilities are part of the originating carrier's network."
 - ISP-bound traffic exchanged between LECs is "telecommunications traffic."
- FCC Rule 51.709(b) states that the carrier "providing transmission facilities dedicated to the transport and termination of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by the interconnecting carrier to send traffic that will be terminated on the providing carrier's network."
 - By its express terms, Rule 51.709(b) limits Qwest to recovery of costs incurred to terminate Level 3's traffic over Qwest's facilities, and it precludes Qwest from recovering costs attributable to delivering its originating traffic to the POI over those same facilities.
 - ISP-bound traffic exchanged between LECs is "traffic."

- **Footnote 149 of the *ISP Remand Order* specifically preserved all interconnection obligations noting that the *Order* “affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carrier’s other obligations . . . , such as obligations to transport traffic to points of interconnection.”**
 - The *ISP Remand Order* did not alter the originating carrier’s interconnection obligation to carry Internet-related traffic to the POI without origination charges

II. Qwest Fails to Adequately Respond to Level 3’s Assertions

- Qwest’s reliance on FCC rules and orders concerning the terminating compensation regime for ISP-bound traffic is misplaced.
 - The FCC has not found that the regulatory treatment of Internet related traffic will not be addressed in the context of 271 proceedings.
 - Instead, the FCC found in both the *Georgia/Louisiana 271 Order* and the *Pennsylvania 271 Order* that because ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2), the question of whether a carrier pays such compensation is “irrelevant to checklist item 13.”
 - Qwest’s interconnection obligation at issue is the prohibition on assessing charges on Level 3 for traffic originated by Qwest’s end user customers – not whether Qwest must pay Level 3 terminating compensation for “Internet related” traffic.
- Level 3 is not “mounting a collateral attack” on the Colorado and Oregon PUC Orders or the rulings of the District Courts in those states.
 - To the contrary, Level 3 is asking the FCC to interpret and apply its interconnection rules and obligations and hold Qwest to these obligations.
 - In filing its Comments and Reply Comments in opposition to Qwest’s 271 application, Level 3 is properly exercising its rights under FCC Rules 1.415 and 1.419 to provide comment as an interested third party on Qwest’s compliance with the section 271 competitive checklist.